IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.379 of 1992

Date of decision : August 30, 2007

State of H.P. **…Appellant.**

Versus

Moti Singh and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Vinay Thakur, Advocate.

Surjit Singh, Judge(Oral)

Respondents, alongwith one more man, named Tashi Norbu, were challaned by Kaza police for being tried for offences punishable under Sections 302 and 201 of the Indian Penal Code. Tashi Norbu, the fourth accomplice of the respondents, allegedly absconded and so, proceedings were conducted against him under Section 299 Cr. P.C. The present respondents were charged with offences punishable under Sections 302 and 201 I.P.C. for murdering one Ram Nath, a Range Officer, and throwing his dead body into a river with intent to destroy the evidence.

2. Prosecution version may be noticed first. On 30th October, 1986, PW-7 Hari Dass hosted a dinner at his residence at Kaza. The three respondents, their absconding accomplice, deceased Ram Nath and one Sonam Gyacho (PW-2), were the guests. The host

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Whether reporters of the local papers may be allowed to see the judgment?

and the guests consumed three bottles of liquor. When the host and the guests were drinking, deceased Ram Nath and respondent Moti Singh happened to quarrel over some petty matter. With the intervention of the host and other guests, they patched up. Thereafter they started taking their meals. When the meals were being taken, respondent Moti Singh dealt a blow of scale (foot-rule made of brass) on the head of deceased Ram Nath. Then Harish Chand slapped deceased Ram Nath twice or thrice on his face. Thereafter the three respondents and Sonam Gyacho (PW-2) left the house of the host together for their respective residences. Deceased and absconding accomplice of the respondents, named Tashi Norbu, left the house of the host some time after the respondents and Gyacho were already gone. Ram Nath had been residing with the respondents in some rented accommodation at Kaza. He did not reach the tenement that night. Two days later, respondent Hira Lal went to the DFO under whom the deceased was working, and informed him that the deceased had been missing.

3. On 20.11.1986, a skeleton of a human being was found in river Spiti. That was identified by PW-9 Jawala Dass, the father-in-law of Ram Nath, to be that of Ram Nath. Postmortem of the skeleton was conducted by PW-14 Dr. Vinay Ram from 21.11.1986 to 25.11.1986. The doctor noticed fracture of skull and compression of brain. He opined that the time gap between sustenance of the injury and the death was about 6 hours and that the deceased had died within three weeks of the conducting of the post-mortem. After the recovery of the dead body, the case was registered on 15.11.1986, on the basis of a report submitted by Dharam Singh, ASI (PW-22). This report was made by the said ASI on a letter dated 4.11.1986, which the DFO wrote

to the SHO, Kaza about the disappearance of Ram Nath. The said letter is Ext.PA and the report of ASI Dharam Singh (PW-2) recorded below this letter is Ext.PD.

4. On completion of the investigation, the three respondents were challaned in the Court of concerned Judicial Magistrate, who committed the case to the Sessions Court. The Sessions Court charged the respondents with the offences punishable under Sections 302 and 201 of the Indian Penal Code and on their pleading not guilty put them on trial.

5. Prosecution mainly relied upon the testimony of PW-7 Hari Dass, who had hosted the dinner on the fateful night. This witness, however, did not support the prosecution version. The trial Court by referring to the testimony of this witness concluded that there was no evidence on record connecting the respondents with the crime. Consequently, it passed the impugned judgment of acquittal.

6. We have gone through the record and heard the learned Additional Advocate General.

7. PW-7 Hari Dass did not support the prosecution version. He categorically stated that no injury had been sustained by the deceased when he was dealt a blow of scale by respondent Moti Singh. He stated that it was in fact a friendly blow and the question of the deceased sustaining any injury could not arise. The doctor Vinay Ram (PW-14), who conducted the postmortem examination, was not shown the scale with which the deceased was allegedly dealt a blow nor did he say that the compound fracture of skull which he noticed on the dead body, could have been caused by means of a blow of a scale (metallic foot-rule). The doctor, in the course of his cross-examination, admitted that injury could have been sustained as a result of fall from a

considerable height. It has also come in the evidence that during the days when the occurrence took place, the temperature of Spiti area used to be between -5^0 C to -10^0 C in the evening and that unless one had a torch with him, it was not safe to move in the night because of darkness and the freezing of water making paths and streets slippery. Under these circumstances, possibility cannot be ruled out that the deceased, while walking back home from the house of his host PW-7 Hari Dass, slipped and fell into the river and sustained the fatal injury, i.e. fracture of skull.

8. It has come in the evidence, rather it is the prosecution's own version, that deceased left in the company of Tashi Norbu, after the three respondents had already left the host's place. Therefore, even if this be a case of killing, the prime suspect should be Tashi Norbu and not any of the present respondents.

9. The evidence with respect to the identification of the dead body is also not very definite. The dead body had been reduced to a skeleton when it was recovered. It could not have been very easy for anybody to identify the dead body when it was in the form of a skeleton only and that too when there were no clothes on it. The clothes of the deceased were recovered several days after recovery of the dead body and the conduct of its postmortem from some other place.

10. In view of the above stated position, we do not think there are good grounds for interfering with the judgment of acquittal passed by the trial Court. Hence, the appeal is dismissed.

(Surjit Singh), J

August 30, 2007(ss) **(Surinder Singh), J**